UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,988	12/22/2003	Joshua M. Kopelman	357044.00003	9050

78905   7590   05/28/2009
Saul Ewing LLP (Philadelphia)
Attn: Patent Docket Clerk
2 North Second St.
Harrisburg, PA 17101

EXAMINER
SHEIKH, ASFAND M

ART UNIT	PAPER NUMBER
3627	

MAIL DATE	DELIVERY MODE
05/28/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _02 February 2009_.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _1-27_ is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) _1-27_ is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a) ☐ All   b) ☐ Some * c) ☐ None of:
      1. ☐ Certified copies of the priority documents have been received.
      2. ☐ Certified copies of the priority documents have been received in Application No. _____.
      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 2/20/2009 have been fully considered but they are

not persuasive.

The examiner notes claim 21 has required new grounds of rejection therefore

those arguments are moot.

With respect to claim 1, the applicant argues Nahan in view of Stack fails to disclose

"represent[s] the independent seller's agreement to sell the good at a fixed price to be

determined by the marketer controller as a function of party's price in accordance with a

predetermined method": and the input and out of price,   From here Stack was taught to

show querying a vendor's controller (e.g. another party), via the communications

network, to determine the vendor's price for a comparable good (see at least, col. 2,

lines 34-50 and col. 3, line 45-53 and col. 4, lines 31-33); and deriving a sale price for

the good from the vendor's price using a predetermined method (see at least, col. 2,

lines 34-50 and col. 3, line 45-53 and col. 4, lines 31-33). Further motivation was cited

for the proposed combination and the further notes that one of ordinary skill in the art

would have had the knowledge to combine the elements of the references in order to

obtain a predictable result. Therefore the examiner finds the arguments with respect to

claim 1, unpersuasive.

The examiner notes Nahan discloses setting a price based on another party wholesale price (see col. 13, lines 12-28). The examiner notes this to be an agreement to sell a item at a fixed price based on another party. Futher

With respect to claim 16, the applicant argues Nahan in view of Stack fails to disclose "querying a plurality of third party vendor controllers, via the communications network to determine each third party's price o" a comparable good" and equating an index price to the lowest price of the third parties' prices" and deriving a sale price for the independent seller's good from the index price using a predetermined method."

The examiner notes Stack discloses a comparison from multiple competitors can be made by a comparison computer program (see at least, col. 5, lines 62-64). Further Stack discloses the comparison program can reduce the price of the item to a value less than the competitor's price based on a predetermined method (see col. 6, lines 20-25). Further the examiner notes under the broadest reasonable interpretation the lowest price of the third parties' can be met with the assumption that if 1 out of all the third parties are the only party that carries the item, the lowest price of the plurality of third parties can be derived. Therefore the examiner finds the arguments with respect to claim 16 unpersuasive.

With respect to claim 18, the applicant argues Nahan in view of Stack fails to disclose a used condition for the independent seller and a new condition for the vendor.

The examiner notes that Nahan discloses that an art work being sold can list a condition (see at least, col. 3, lines 44-48). The examiner notes as interpreted a condition can represent old/used, damaged, or new (e.g. LNIB, MINT, etc). Further

Nahan discloses that "multiple works" can be attributed to an artist and further this can apply to furniture, oriental rugs, or numismatics. The examiner notes that listing dealer can list items and a buying dealer can purchase items (see at least, col. 13, lines 47-53). From this the examiner has interpreted with a scenario with furniture or numismatics "old/used" items can be marked with a condition by a listing dealer in which a buying dealer can make an offer to purchase. The listing dealer represents the independent seller. From here Stack was taught to show querying a vendor's controller, via the communications network, to determine the vendor's price for a comparable good (see at least, col. 2, lines 34-50 and col. 3, line 45-53 and col. 4, lines 31-33); and deriving a sale price for the good from the vendor's price using a predetermined method (see at least, col. 2, lines 34-50 and col. 3, line 45-53 and col. 4, lines 31-33). Further motivation was cited for the proposed combination and the further notes that one of ordinary skill in the art would have had the knowledge to combine the elements of the references in order to obtain a predictable result. Therefore the examiner finds the arguments with respect to claim 18, unpersuasive.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 3-19, 26, and 27 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Nahan et al. (US 5,664,111) in view of Stack (US 6,076,070).

Claim 1 and 3-19 and 26 and 27

[claims 1, 16, 18] Nahan discloses computer-implemented method for pricing goods of

independent sellers using a marketeer controller capable of communicating via a

communications network, the marketeer controller including a CPU and a memory

operatively connected to the CPU, the method comprising the marketeer controller (see

at least, abstract and col. 13, lines 13-28): receiving from an independent seller, via the

communications network, the data identifying a good offered for dale by the

independent seller which represents the independent seller's agreement to sell the good

at a fixed price to be determined by the marketer controller as a function of a party (see

at least, col. 2, lines 38-59 and col. 13, lines 38-49: the examiner notes the listing data

becomes permanent) and **[claim 26 and 27]** wherein the predetermined pricing method

to be used is set by the marketer controller/independent seller (see col. 13, lines 13-28)

Nahan fails to disclose querying a vendor's controller, via the communications

network, to determine the vendor's price for a comparable good, said querying

comprising the marketer controller transmitting a query, via the communications

network, to a vendor's controller that is configured for electronic communication via the

communication network and that includes a respective CPU and respective memory

operatively connected to the respective CPU, said query identifying said good and

requesting transmission to the marketer controller of the vendor's price for the

comparable good (e.g. another parties price based on a predetermined method);

receiving, via the communications network the vendors price for the comparable good;

and establishing a sale price at which the good may be purchased by a buyer from the

independent seller, a pricing agent stored in the memory of the marketer controller

receiving the vendor's price as input and using a predetermined method to derive the

sale price and provide it as output.

Stack discloses querying a vendor's controller, via the communications network,

to determine the vendor's price for a comparable good, said querying comprising the

transmitting a query, via the communications network, to a vendor's controller that is

configured for electronic communication via the communication network and that

includes a respective CPU and respective memory operatively connected to the

respective CPU, said query identifying said good and requesting transmission of the

vendor's price for the comparable good (see at least, col. 2, lines 34-50 and col. 3, line

45-53 and col. 4, lines 31-33); receiving, via the communications network the vendors

price for the comparable good (see at least, col. 3, lines 57-61); and establishing a sale

price at which the good may be purchased by a buyer from the independent seller, a

pricing agent stored in the memory of the marketer controller receiving the vendor's

price as input and using a predetermined method to derive the sale price and provide it

as output (see at least, col. 3, lines 45-col. 4, line 15).

Further Stack discloses **[claims 3 and 19]** wherein the seller agrees, before the

sale, to sell the good at a sale price determined by the marketer proximate a time of

sale of the good to the buyer, the sale price being determined in accordance with the

predetermined method (see at least, col. 2, lines 34-50 and col. 3, line 45-53 and col. 4,

lines 31-33) and **[claim 4]** wherein suing a predetermined method to derive the sale

price comprises equating an index price to the vendor's price of the comparable good

(see at least, col. 3, lines 40-43: the examiner notes if the "competitor's price is lower" to

be a an index price) and **[claims 5, 8, and 9]** wherein the seller's good is used and has

a certain universal product code (UPC) or International Standard Book Number (ISBN)

code, and the comparable good is new and has an identical UPC or ISBN (see at least,

col. 4, lines 35-39) and **[claim 6]** wherein the querying is performed responsive to the

receiving of the identifying data (see at least, col. 2, lines 34-50 and col. 3, line 45-53

and col. 4, lines 31-33) and **[claims 7 and 17]** wherein the predetermined method for

deriving the sale price of the independent seller's good is set by the marketeer controller

(see at least, col. 2, lines 34-50 and col. 3, line 45-53 and col. 4, lines 31-33) and

[claims 10 and 11 and 25] wherein the predetermined method comprises discounting

the index price for the comparable good to determine the sale price for the independent

seller's good (see at least, col. 2, lines 34-60 and col. 3, line 45-53 and col. 4, lines 31-

33) and further with respect to [claim 11] the examiner notes that discounting based on

the index price is a matter of design choice and can be set by any parameter used for

calculating a discount (e.g. 10% the difference of the competitor price based on a price match) and [claim 12] wherein the querying is performed responsive to receiving from a buyer, via the communications network, an expression of interest in purchasing the good (see at least, col. 2, lines 34-60 and col. 3, line 45-53 and col. 4, lines 31-33and col. 4, lines 35-39) and **[claims 13-15 and 22-23]** wherein the expression of interest is a standard identification code identifying the good and wherein the standard identification code comprises a universal product code (UPC) or International Standard Book Number (ISBN) (see at least, col. 2, lines 34-60 and col. 3, line 45-53 and col. 4, lines 31-33and col. 4, lines 35-39)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Nahan to include querying a vendor's controller, via the communications network, to determine the vendor's price for a comparable good; and deriving a sale price for the good from the vendor's price using a predetermined method as taught by Stack. One of ordinary skill in the art would have been motivated to combine the teachings in order to assure a customer that they are getting the best price available for goods and/or services ordered through the network (see at least, Stack, col. 2, lines 27-31).

Claim 2 and 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Nahan et al. (US 5,664,111) in view of Stack (US 6,076,070) as applied to claim 1

above, and further in view of Woolston (US 6,202,051 B1)

Claim 2 and 21-25

Nahan in view of Stack disclose the claimed invention as noted above with respect to

claim 1, however fails to disclose presenting the good in a marketplace as an item for

sale at an unidentified price, the marketplace being accessible to a buyer via the

communications network and presenting the good for sale in the marketplace at the sale

price (e.g apart form any price for the good) and adding the good to a list of goods

registered for sale, the good being listed for sale at an unspecified price.

Woolston discloses presenting the good in a marketplace as an item for sale at

an unidentified price, the marketplace being accessible to a buyer via the

communications network and presenting the good for sale in the marketplace at the sale

price (e.g apart form any price for the good) and adding the good to a list of goods

registered for sale, the good being listed for sale at an unspecified pri (see at least,

abstract).

It would have been obvious to one of ordinary skill in the art at the time the

invention was made to modify the teachings of Nahan in view of Stack to include

presenting the good in a marketplace as an item for sale at an unidentified price, the

marketplace being accessible to a buyer via the communications network and

presenting the good for sale in the marketplace at the sale price (e.g apart form any

price for the good) and adding the good to a list of goods registered for sale, the good

being listed for sale at an unspecified price as taught by Woolston. One of ordinary skill

in the art would have been motivated to combine the teachings in order to allow users to

speculate on the price of collectable or used goods in an electronic market place (see at

least, Woolston, col. 2, lines 3-8).

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nahan

et al. (US 5,664,111) in view of Stack (US 6,076,070) as applied to claim 1 above, and

further in view of Reuhl et al. (US 5,873,069)

Claim 20

Nahan in view of Stack fails to disclose wherein the querying is performed proximate a

time that the independent seller registers the good with the marketer as a good offered

for sale by the seller.

Reuhl discloses wherein the querying is performed proximate a time that the

independent seller registers the good with the marketer as a good offered for sale by

the seller (see at least, col. 3, lines 40-57: the examiner notes when an item would be

added it would be compared to the market and priced accordingly).

It would have been obvious to one of ordinary skill in the art at the time the

invention was made to modify the teachings of Nahan in view of Stack to include

wherein the querying is performed proximate a time that the independent seller registers

the good with the marketer as a good offered for sale by the seller as taught by Reuhl.

One of ordinary skill in the art would have been motivated to combine the teachings in order to provide a comparison among competitors on the product of interest or a substantially similar competitor product (see at least, Reuhl, col. 1, lines 30-38).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Asfand M. Sheikh whose telephone number is (571)272-1466. The examiner can normally be reached on 9a-5p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ryan M. Zeender can be reached on (571)272-6790. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Asfand M. Sheikh/
Examiner, Art Unit 3627
Wednesday, May 20, 2009

/F. Ryan Zeender/

Supervisory Patent Examiner, Art Unit 3627